

## **GENERAL TERMS AND CONDITIONS**

### **1. General Provision**

Nothing in any resulting contract shall be construed as authority for either party to make commitments which will bind the other part beyond the scope of service contained herein. The contract is subject to appropriations by the County.

### **2. Laws of the Commonwealth**

- A. Any purchase order or contract resulting from this solicitation shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The contractor providing goods or services to the County under this contract assures the County that it is:
- (1) Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
  - (2) Not employing illegal alien workers or otherwise violating the provision of the Immigration Reform and Control Act of 1986, or Sec. 2.2-4311.1 Code of Virginia.
  - (3) Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
  - (4) Submitting the bid or proposal in full compliance with the Virginia Conflict of Interest Act.
- B. In every contract of over \$10,000.00, the Contractor agrees during the performance of this contract that the Contractor:
- (1) Will not discriminate against any employee or applicant for employment because of race, color, sex, disability, or national origin, except where necessary to the normal operation of the Contractor.
  - (2) Will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this discrimination clause.
  - (3) Will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees place by or on behalf of the Contractor under this contract. All notices, advertisements, and solicitations placed in accordance with federal law rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- (4) The contractor will include the provisions of the foregoing subparagraph 2.B.(1) in every subcontract or purchase order under this Contract of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor; and

C. In every contract of over \$10,000.00, the Contractor agrees during the performance of this contract that the Contractor shall:

- (1) Provide a drug-free workplace for its employees.
- (2) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions which will be taken against any employee for a violation.
- (3) State in all of its solicitations or advertisements for employees that it maintains a drug-free workplace.
- (4) Include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000.00 so that said provisions shall be binding upon each subcontractor or vendor.

For purposes of this sub-paragraph, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the provisions of the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marihuana during the performance of the contract.

In addition to the provision contained in subparagraph 3 pertaining to drug-free workplace, Contractor shall comply with the Federal Drug Free Workplace Act.

D. Pursuant to Section 2.2-4343.1 of the Code of Virginia 1950, in all invitations to bid, request for proposals, contracts, and purchase orders, the County does not discriminate against faith-based organizations.

“Faith-based Organization” means a religious organization that is or applies to be a Contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or received goods, services, or disbursements provided pursuant to this Agreement the following notice:

### **NOTICE**

*Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to contract between the County and a faith-based organization, you are hereby notified as follows:*

***Neither the County's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the County Administrator.***

- E. Compliance with State Law Section 2.2-4311.2 Code of Virginia.
  - (1) If Contractor is organized as stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership it shall certify that it is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1-or Title 50 of the Code of Virginia or as otherwise required by law.
  - (2) Any contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any contractor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
  - (3) Any contractor described in Subsection (2) that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.
  - (4) Any Contractors described in subsection (1) that enters into a contract with the County pursuant to this chapter shall not allow its existence to lapse or its

certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the contract.

- (5) County may void any contract with a contractor if the contractor fails to remain in compliance with the provisions of this section.

### 3. **Certifications**

The Contractor certifies that:

- (a) The bid offer is made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal; is in all respects fair and without collusion or fraud; and is or is intended to be competitive and free from any collusion with any person, firm or corporation;
- (b) The Contractor has not offered or received any kickback from any other bidder or Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
- (c) The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;
- (d) The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences and civil damage awards and agrees to abide by all conditions of this proposal; and
- (e) The Contractor or subcontractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

4. **Warranties**

Any goods or services furnished by Contractor under the contract shall be covered by the most favorable warranties provided by the Contractor to any customer; the rights and remedies hereby provided are in addition to any and do not limit those otherwise available to the County. The Contractor agrees that if such warranties are in any respect breached, the Contractor will pay to the County the full contract price agreed to by the County to be paid for the supplies, materials, equipment or services furnished under the bid or proposal.

5. **Modification, Additions or Changes**

Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the County; however, no fixed price contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000.00 whichever is greater without the approval of the Board of Supervisors. The amount of any contract may not be increased for any purpose without adequate consideration provided to the County.

6. **Assignment**

The contract may not be assigned, sublet, or transferred without the written consent of the County.

7. **Default**

In the case of default or breach by the Contractor or the failure of the Contractor to deliver the services in conformance with the specifications in the contract the County shall give written notice to the Contractor specifying the manner in which the contract has been breached. If the County gives such notice of breach and the Contractor has not corrected the breach within fifteen (15) days of receipt of the written notice, the County shall have the right to immediately rescind, revoke or terminate the contract and in addition to any other remedies available at law to procure such services from other sources and hold the contractor responsible for any and all excess cost occasioned thereby.

8. **Indemnification**

The Contractor shall indemnify and hold harmless County, its officers, boards, commissions agents, and employees against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities (including costs or liabilities of the County with respect to its employees), of every kind and nature whatsoever, including but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost, and expenses resulting or arising out of any of the same, including the attorney's fees, accounting fees, per diem expenses, traveling and transportation expenses or other costs or expenses arising out of or pertaining to the

performance of the Contract, unless resulting from the negligence of the County or its offices, boards, commission, agents or employees.

9. **Ownership of Documents**

Any reports, studies, photographs, negatives, or other documents prepared by Contractor in the performance of its obligations under any resulting contract shall be remitted to the County by the contractor upon completion, termination or cancellation of this Contract. Contractor shall not use, willingly allow or cause to have such material used for any purpose other than performance of Contractor's obligations under this contract without the prior written consent of the County. The County shall own the intellectual property rights to all material produced under this contract.

10. **Required Payment**

Pursuant to Section 2.2-4354 of the code, the contractor covenants and agrees to:

- (a) Within seven (7) days after receipt of any amounts paid to the contractor under the Contract, (i) pay any subcontractor for its proportionate share of the total payment received from the County attributable to the work under the contract performed by such subcontractor, or (ii) notify the County and the subcontractor in writing of its intention to withhold all or part of the subcontractor's payment and the reason therefore;
- (b) Provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Contract; and
- (c) Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the contractor on all amounts owed by the contractor that remain unpaid after the seventh (7) day following receipt by the Contractor of payment from the County for work performed by the subcontractor under the Contract, except for amounts withheld pursuant to subparagraph 10a. above.
- (d) Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month.
- (e) Include in its contract with any and all subcontractors the requirements of a, b, c and d above.

11. **Liability Coverage**

Unless otherwise expressly excepted in the procurement documents prepared by the county, the Contractor shall take out and maintain during the life of the Contract such bodily injury, liability and property damage liability insurance as shall protect it and the county from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this agreement. Such insurance shall at least have the coverage's and be in the amounts set forth in

section 12 “Insurance and Bond Requirements” set forth below and shall name the Board of Supervisors and the County as Additional Insured’s. Such insurance must be issued by a company admitted within the commonwealth of Virginia and with at least a Best’s Key Rating of A:V1. The contractor shall provide the County with a certificate of insurance showing such insurance to be in force.

12. **Insurance and Bond Requirements**

The Contractor shall maintain the following insurance to protect it from claims under the Workman’s Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under the contract, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

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**TYPE OF COVERAGE****LIMITS**

Workers' Compensation and Employer's Liability including coverage under United States Longshoremen's and Harbor Workers Act where applicable

Statutory including Employer's Liability of \$100,000 Each Accident  
\$500,000 Disease-Policy Limit  
\$100,000 Each Employee

Comprehensive General Liability  
Endorsement coverage's

Including the Broad Form C.G.L.

Premises-Operations  
Bodily Injury Liability and Property

\$500,000 Each Occurrence  
\$1,000,000 Aggregate

Including:  
Underground Hazard (U), Explosion and Collapse, Hazard (XC)

Independent contractors- Owner's Protective Bodily Injury Liability and Property Damage Liability Combined

\$500,000 Each Occurrence  
\$1,000,000 Aggregate

Completed Operations – Products Liability  
Bodily Injury Liability and Property Damage Liability Combined for five (5) Years after payment

\$500,000 Each Occurrence  
\$1,000,000 Aggregate

Contractual Bodily Injury Liability and Property Damage Liability combined in Accordance with Agreement between Owner And contractor

\$500,000 Each Occurrence  
\$1,000,000 Aggregate

Personal Injury with Employee's Exclusion C deleted

\$1,000,000 Aggregate

Automobile Bodily Injury Liability and Property Damage Liability combined  
Covering all automobiles, trucks, tractors, Trailers, or other automobile equipment  
Whether owned, non-owned, or hired by the Contractor

\$500,000 Per Accident

Umbrella/Excess Liability +

\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

Professional Liability Insurance

\$1,000,000 Limit of Liability

- (a) The Contractor shall purchase and maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the County for damage thereto.
- (b) The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the solicitation.

13. **No Waiver**

Any failure of the County to demand rigid adherence to one or more of the Agreement's provisions in the Contract, on one or more occasions shall not be construed as a waiver nor deprive the county of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

14. **Termination**

The County may terminate the resulting Contract for its convenience upon thirty (30) days written notice to the Contractor. The Contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Contractor's work under this contract.

If termination is for the contractor's breach of the requirements of the Agreement, including the schedule set forth herein, the County shall be entitled to recover reasonable costs, damages, and/or attorney's fees caused by the Contractor's breach. In such case, written notice of termination shall be given as provided in the Agreement.

15. **Choice of Law**

To ensure uniformity of the enforcement of this Contract, this Agreement it shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

16. **Forum Selection**

The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Contract. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this contract shall have jurisdiction and venue only in the Circuit Court of Appomattox or in the U.S. District Court, of Virginia.

17. **Severability**

If any provisions of this Contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provisions shall be fully

severable and this Contract shall be construed and enforced as if such illegal, or unenforceable provision had never been part of this Contract, and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Contract.

18. **Notices**

All request, notices and other communications required or permitted to be given under this Contract shall be in writing and delivery thereof shall be deemed to have been made when such notice shall have been either:

- (a) Duly mailed by first-class, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect, or
- (b) Transmitted by hand delivery, telegram, telex, telecopy, or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the county shall be sent to:

John Spencer, Purchasing Agent  
Appomattox County  
P.O. Box 863  
153A Morton Lane  
Appomattox, Virginia 24522

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